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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 380

NGIM AH OY,
Petitioner,

vs.

EDWARD L. HAFF, as District Director, United States Immigration and Naturalization Service, Port of San Francisco, California,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit and Brief in Support Thereof

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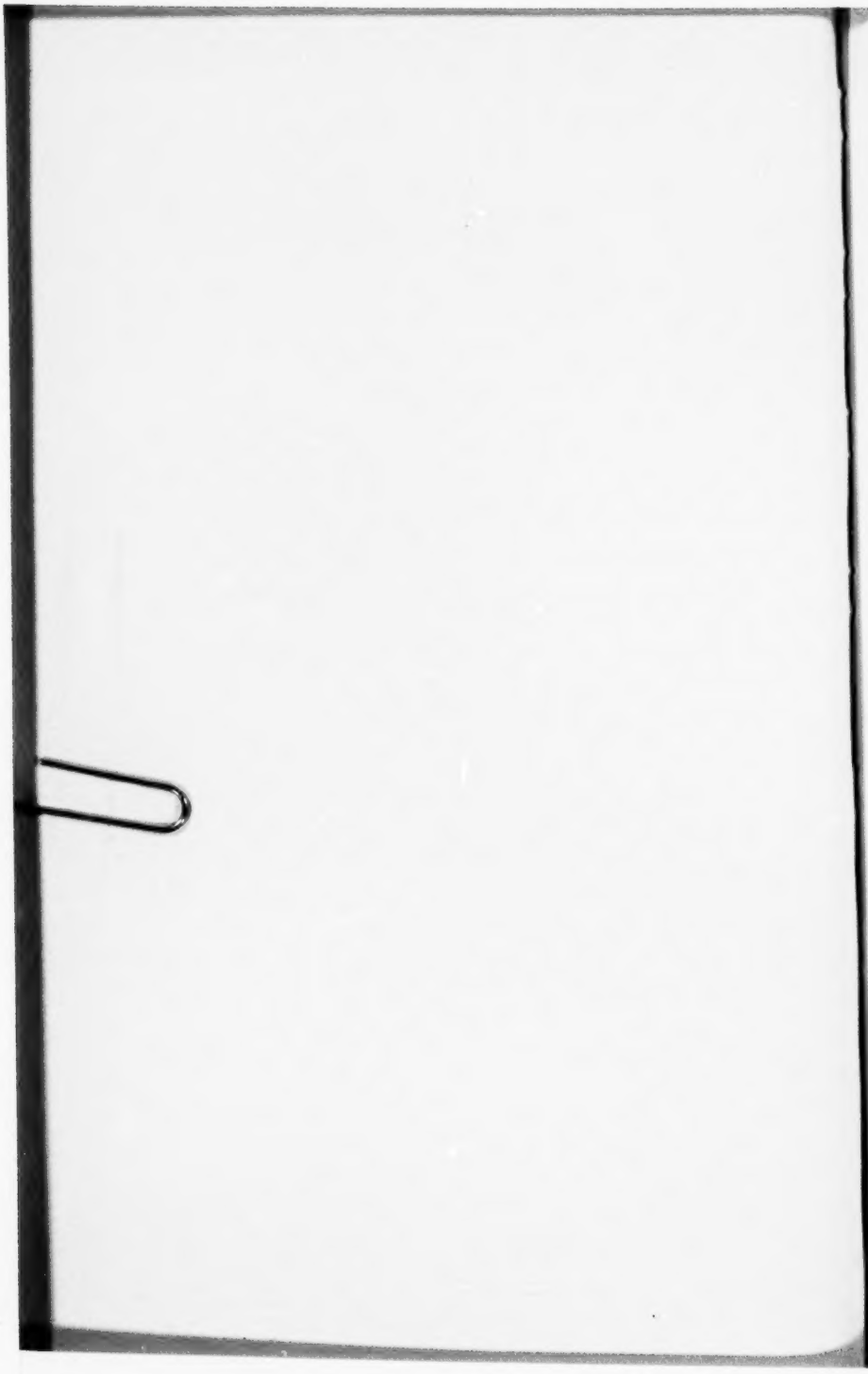

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To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

May it please the Court:

The petition of Ngim Ah Oy, respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF MATTER INVOLVED

Petitioner, a young woman, who is, at the present time, 24 years of age, American reckoning, having been born on January 2, 1916, in China, arrived at San Francisco, California, on April 13, 1939, and applied for admission to the United States, as an American citizen, under Section 1993 of the Revised Statutes of the United States (8 USCA, Section 6), as amended, as the natural born daughter of Ngim Lin, a citizen of the United States.

Petitioner's father, Ngim Lin, was admitted to the United States in 1915, under Section 1993 of the United States Revised Statutes, as the son of Ngim Chun Nam, a native born citizen of the United States. He was issued Form 430 in 1915 shortly after his admission and went to Honolulu, where he remained for a few months. He returned to Continental United States in September, 1916, and was again admitted as an American citizen. In 1922, he was issued Form 430 as an American citizen, but did not leave the country. In 1935, his United States citizenship was investigated in connection with his then intention to have the present petitioner come to the United States, and it was conceded. Due to objections made by petitioner's mother in China at that time, the petitioner was compelled to delay coming to the United States until last year. Petitioner's father holds Immigration Certificate of Identity No. 19584.

Petitioner, as stated above, arrived at the Port of San Francisco, on April 13, 1939, and after inspection aboard the S. S. "President Pierce" by an immigrant inspector, was held for examination before a Board of Special Inquiry, without any preliminary examination being accorded her, nor was she, her attorney or any of her relatives given any notice of the time and place fixed for the hearing of the preliminary examination.

At the hearing before the Board of Special Inquiry the petitioner presented for examination herself, her maternal uncle, Woo Tong, an American citizen; her paternal uncle, Ngim Tin; and two friends of the family of herself and her father named Lau Wai Yee and Young Muey.

After taking and considering the evidence, the Board of Special Inquiry recommended that petitioner be excluded from the United States upon the grounds that the citizenship of her alleged father, Ngim Lin, was not reasonably established, and that she, petitioner, failed to reasonably establish that she was a blood daughter of her alleged father. An appeal was taken from said decision of the Board of Special Inquiry to the Secretary of Labor's Board of Review. After considering the appeal it was decided by the Secretary of Labor's appellate agency that: petitioner's alleged father, Ngim Lin, was an American citizen; secondly, that petitioner failed to reasonably establish that she was the blood daughter of her alegd father, Ngim Lin. Thence the proceedings in

the formal courts and the present application for writ of certiorari.

B.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The petitioner believes that the reasons why this Honorable Court should grant this petition are:

1. That the point decided by the Honorable Circuit Court of Appeals to the effect that the Immigration Act of February 5, 1917, does not require an examination by *at least two immigrant inspectors* is the first time that an interpretation of the clause of the statute "at least two immigrant inspectors" has been decided either by this Honorable Court, or any Circuit Court of Appeals. A decision on this point would be far reaching and of national importance. This is sufficient to, and demands, the allowance of the writ of certiorari.

2. There are a number of subsidiary points which should be decided if the writ of certiorari is allowed, and, inasmuch as all points relied upon must be stated in the petition for the writ of certiorari the following are relied upon, and we respectfully ask that they be decided if the writ of certiorari is allowed.

(a) That petitioner was denied due process of law because she was not afforded a preliminary examination by one immigrant inspector before being held for examination before a Board of Special Inquiry.

(b) That the Circuit Court of Appeals erred in not holding that the Secretary of Labor, on appeal, acted unfairly and unreasonably against the petitioner in finding that there was substantial evidence that petitioner's vital witness, Whoe Tong, had been guilty of suggesting the taking of a bribe by an immigrant inspector in a previous immigration case and that by reason thereof his credibility as a witness was thereby impeached, whereas there was no substantial evidence whatsoever supporting this finding, and, on the contrary, said witness denied the claimed fact. (Exhibit "A", Exhibit "S", pp. 67, 68). This point was raised in the assignments of errors but was not decided by the Honorable Court of Appeals.

(c) That the Court of Appeals erred in holding that the Secretary of Labor's Board of Review had corrected the error committed by the Board of Special Inquiry in not calling certain ex parte records to the attention of petitioner's witness, Whoe Tong (Woo Tong), so that said witness would have an opportunity of denying prejudicial implications contained therein against his credibility as a witness This point was raised in the assignments of errors but was not decided by the Honorable Court of Appeals.

(d) That the Circuit Court of Appeals erred in not holding that the decision of the Secretary of Labor on appeal, in affirming the exclusion decision of the Board of Special Inquiry, was based, in part, on grounds not relied upon by the Board of Special Inquiry. This point was raised in the assignments of

errors, but was not decided by the Honorable Court of Appeals.

(e) That the Secretary of Labor's Board of Review abdicated their functions as an administrative appellate agency by refusing to pass upon and determine whether or not the Board of Special Inquiry had found on substantial or sufficient, or any, evidence that petitioner's vital witness, Whoe Tong, had been successfully impeached because of the findings of the Board of Special Inquiry that he had "been repeatedly guilty of perjury and subornation of perjury in numerous immigration proceedings." This point was raised in the assignments of errors but was not decided by the Honorable Court of Appeals.

(f) That the lower Court of Appeals erred in not holding that the Secretary of Labor, through her Board of Review, had made no finding that petitioner was not a citizen of the United States or that she was an alien ineligible to admission to the United States. This point was not raised in the assignments of errors but should be considered in view of the decision in *Mahler v. Eby,* 264 U. S. 32, 45.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered

and entitled on its docket, No. 9418, Ngim Ah Oy vs. Edward L. Haff, as District Director, United States Immigration and Naturalization Service, Appellee, and that the said judgment of the United States Circuit Court of Appeals, Ninth Circuit, may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

Dated, San Francisco, California, August 22, 1940.

ERNEST B. D. SPAGNOLI,
Attorney for Petitioner.

WALTER F. LYNCH,
Of Counsel for Petitioner.